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HOME (ELECTIONS) DEPARTMENT

NOTIFICATION

The 28th November 2007

No. 6658—VE(A)-39/2007-Elec. — The following notification, dated 19th October 2007, issued by the Election Commission of India, New Delhi is hereby published for general information :—

By order,
SMT. ALKA PANDA
Chief Electoral Officer & *Ex Officio*
Commissioner-*cum*-Secretary to Government

ELECTION COMMISSION OF INDIA

Nirvachan Sadan Ashoka Road, New Delhi-110001

Dated the 19th October, 2007
27 Asvina, 1929 (Saka)

NOTIFICATION

No. 82—OR-LA-(4/2004)-2006— In pursuance of Clause (b) of sub-section (2) of Section 116-C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published the order, dated the 11th September 2007 of the Supreme Court of India, New Delhi in the Civil Appeal No. 1128 of 2006 filed against the order dated 23rd September of the High Court of Orissa, in the Election Petition No. 4 of 2004.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 1128 OF 2006

B. Dandapani Patra . . . Appellant

Versus

Bikram Keshari Arukha & Others . . . Respondents

ORDER

Heard learned counsel for the parties.

This is an appeal directed against the judgement and order, dated the 23rd September 2005 passed by the learned Single Judge of the High Court of Orissa whereby the election petition filed by the appellant herein was dismissed. The election petition was filed by the appellant challenging the election of the Orissa Legislative Assembly from the single member, Bhanjanagar Constituency No. 66. It is alleged that appellant was a candidate on behalf of the Congress-I Party in the last General Election, 2004 and respondent No. 1, who was declared elected, was a Biju Janta Dal Candidate. On 28th February 2004 notification was published inviting objections, if any, for correction of the existing Electoral Roll prepared for election of the Assembly Constituency in January 2000. Another notification was published on the 24th March 2004 for holding election to the Orissa Legislative Assembly fixing the last date for filing of nomination on the 31st March 2004. The appellant election petitioner and the respondent No. 1 returned candidate filed their nominations on the 29th March 2004 and the 31st March 2004, respectively. On the 7th April 2004, the appellant was supplied with a copy of the Electoral Roll and to his utter surprise found names of about 14,000 electors to have been struck off the existing Electoral Roll, as in force at the time when the notice dated the 28th February 2004 was published. It is alleged in the election petition that the same was done without giving an opportunity of being heard to the electors whose names were struck off. It is alleged that on the 7th April 2004 the appellant made a representation to the Chief Electoral Officer against such illegal action of the Electoral Registration Officer. Similar

representation was also made by one Bhajaman Sahoo. Again on the 12th April 2004 the appellant sent a complaint to the Chief Electoral Officer, Orissa with a copy to the Election Commission, Government of India against the alleged illegality committed by the Registering Officer. It is alleged that on coming to know about such representation, the Returning Officer-*cum*-Sub-Collector, Bhanjanagar took back the Electoral Roll which was supplied to the appellant and it was returned to him on the 10th April 2004 deleting the names of two thousand electors more. During the time of election held on the 20th April 2004 when some of the electors, including witnesses Nos. 1 to 4 whose names were in the final Electoral Roll went to the polling station to cast their votes, they were disappointed that their names have been struck off the Electoral Roll. The total number of votes polled were 99,968 and the appellant was defeated by a margin of 5,426 votes only. It is also alleged in the election petition that had the names of these 14,000 voters not been struck off from the Electoral Roll, they would have cast their votes in favour of the appellant and appellant would have comfortably won the election. Other allegations were also made in the election petition with which we are not concerned. The election petition was contested by the returned candidate and on the basis of the reply filed by the respondent No. 1 returned candidate, the learned Judge framed six issues and thereafter recorded the evidence and came to the conclusion that the final Electoral Roll was published after deleting the names of these 14,000 voters and that there is no evidence to show that if in case these 14,000 voters were there, all would have voted in favour of the appellant and that would have materially affected the result of the election. The learned Single Judge after considering the material placed before him rejected both the contentions. The learned Single Judge also found that the appellant has not been able to prove that names of all these 14,000 voters were deleted after the publication of the final list and he also found that if these 14,000 voters would have been there, it would not vitiate the entire election process. Hence, the election petition filed by the appellant was dismissed.

Aggrieved against the said judgement and order, dated the 23rd September 2005 the present appeal has been filed.

We have heard learned counsel for the parties and perused the record.

The first and foremost question which has come before us is that the names of the Election Commissioner of India, the Chief Election Officer, Orissa and Sub-Collector-*cum*-Returning Officer-*cum*- Electoral Registration Officer were deleted from the array of parties in the election petition before the High Court vide order No. 13, dated the 1st March 2005. Therefore, all these allegations which have been made in the election petition that the names of 14,000 electors were deleted after final publication of the Electoral Rolls or that no opportunity was given to the electors whose names were deleted cannot be gone into because these questions could have been answered only by the respondent No. 4 before the High Court, i.e., Sub-Collector-*cum*-Returning Officer - *cum*- Electoral Registration Officer. Since the names of respondents Nos. 2 to 4 were deleted from the array of parties, there is no counter affidavit filed on behalf of these respondents before the High Court and in the absence of pleadings, it is difficult to record any finding whether an opportunity was given to these 14,000 electors before their names were struck off from the Electoral Roll.

Be that as it may, we have also heard learned counsel for the appellant at length and find that as per the finding recorded by the learned Single Judge of the High Court the names of 14, 000 electors were deleted from the Electoral Rolls prior to the publication of final list. This finding of fact cannot be gone into at this stage. Learned counsel for the appellant has drawn our attention specifically to the statement of PW-6 and tried to take advantage of one

or two sentences made by the said witness. PW-6 Mrs. Alka Panda had stated in her statement in chief that “ I cannot say if opportunity was given to all the electors, whose names were scored off from the Electoral Roll to file objection before such deletion.” But subsequently she has also stated that “ It is not a fact that proper opportunity was not given to the electors whose names were deleted from the Electoral Roll to file any objection.” Both these statements have been considered by the learned Single Judge of the High Court and after going through other material on record the finding that it is not possible to come to a finding that the 14,000 Electoral Rolls were not given an opportunity to file objections before preparation of the final Electoral Rolls and therefore, this finding of fact clinches the whole matter regarding the allegation that the names of 14,000 electors were wrongly deleted from the Electoral Roll. Moreover, the persons whose names were deleted never filed any appeal under the Rules against the deletion of their names. Only the evidence of 5 witnesses has been adduced to show that at the time when they reached the polling booth they found that their names were deleted from the Electoral Roll, and they were not given an opportunity of hearing before deleting their names. By that the whole election cannot be materially affected. There is no evidence to show that all the 14,000 persons whose names were deleted were not given opportunity of hearing before deleting their names. Moreover, no objection was filed by those names were deleted. Thus, in this view of the matter the view taken by the learned Single Judge of the High Court cannot be said to be illegal and there is no ground to interfere with the same. Consequently, this appeal fails and is dismissed as such No. order as to costs.

New Delhi
The 11th September 2007

A. K. MATHUR

By order,
R. K. SRIVASTAVA
Secretary